

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
January 24, 2013

Meeting called to order at 6:20 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Bob Melanson, Mark Alesse, Ann Grinnell, Rich Balano

Members absent: Susan Tuveson

Staff: Gerry Mylroie, Town Planner

Pledge to the Flag

Minutes: January 10, 2013

Ms. Grinnell moved to accept the minutes of January 10, 2013 as submitted

Mr. Balano seconded

Motion carried unanimously by all members present

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

Devin Beliveau, Ox Point Drive, voiced his support of the Thresher Memorial project, and read a statement (attached).

Peter McLeod, Norton Road, asked that Planning Board agenda items should be written to clearly describe what will be discussed, specifically referring to Item 2, Rural Residential Zone does not give you any idea what is being changed. Mr. Emerson stated full changes are available in the Planning office one week prior to public hearings.

Martha Peterson, Haley Road, asked that the communication from Murray Plumb & Murray, Attorneys at Law and other items received by Board members at the Thresher workshop be placed on a Planning Board agenda for future discussion. Mr. Emerson stated he wished all the items be combined and reviewed at the appropriate time.

Wendy Pomeroy, Kittery Point, noted that given the number of people at the workshop concerned about the Thresher Memorial, she thought the process needed attending to. She commented that she found the referenced legal issues, use of public property, involvement of the Town Planner in the design and other issues surrounding the Thresher project disturbing.

There was no further public comment.

ITEM 1 – 44 Remicks Lane Land Transfer, Subdivision Plan Review.

Action: Hold a public hearing, review plan and grant or deny preliminary/final approval.

Donna Dionne, owner and applicant, requests approval to convey exempt land within the required 5-year waiting period to an abutter, thereby creating a third lot and no longer exempt from subdivision. The property located at 44 Remicks Lane, Tax Map 65, Lot 26, Residential Rural Zone. Agent is Bill Anderson, Anderson-Livingston Engineers, Inc.

Donna Dion, owner, summarized the request to convey 1 acre of her property to an abutter, Ken Thumith, as a back yard buffer. The property will not be developed.

There was no testimony. The Public Hearing opened and closed at 6:40 p.m.

Mr. Melanson moved to read the Findings of Fact for approval.

Ms. Grinnell seconded

Motion carries unanimously by all members present

Findings of Fact

Whereas Donna Dionne, owner and applicant, requests approval to convey exempt land within the required 5-year waiting period to an abutter, thereby creating a third lot and not longer exempt from subdivision. The property is located at 44 Remicks Lane, Tax Map 65, Lot 26, Residential Rural Zone. Agent is Bill Anderson, Anderson-Livingston Engineers, Inc. Hereinafter the "Development".

Now therefore, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4 and as recorded below:

Action by the Board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify the development satisfies the following requirements:

- A. *Development Conforms to Local Ordinances: The proposed development conforms to a duly comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.*
The plan prepared appears to be suitable for recording.

Vote of 6 in favor, 0 against, 0 abstaining

- B. *Freshwater wetlands identified;*
C. *River, stream or brook identified;*
D. *Water supply sufficient;*
E. *Municipal water supply available;*
F. *Sewage disposal adequate;*
G. *Municipal solid waste disposal available;*
H. *Water body quality and shoreline protected;*
I. *Groundwater protected;*
J. *Flood areas identified and development conditioned;*
K. *Stormwater managed;*
L. *Erosion controlled;*
M. *Traffic managed;*
N. *Water and air pollution minimized;*
O. *Aesthetic, cultural and natural values protected.*

Does the Board concur that standards B through O are not applicable to the proposed amendment?

Vote of 6 in favor, 0 against, 0 abstaining

- P. *Developer financially and technically capable*
The applicant appears to meet this standard.

Vote of 6 in favor, 0 against, 0 abstaining

Now therefore the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact. The Kittery Planning Board hereby grants Final Approval for the Development at the above referenced property, with waivers granted as noted and any conditions per Title 16.10.8.2 as noted.

Vote of 6 in favor, 0 against, 0 abstaining

Waivers:

- | | |
|--|--|
| B. Scale from 1"=50' to 1"=100' | P. Street alignments... |
| F. Location and description of dwelling units... | Q. Roadway drawings and data |
| J. Locations of natural features... | R. Proposed lighting |
| K. Location of existing utilities... | S. Location of machinery... |
| L. Landscaping | T. Descriptions of hazardous material... |
| M. Natural and historical topography | U. Existing contours |
| N. Vicinity map | V. Location and dimensions of sidewalks, curbs, etc... |
| O. Location of open space... | X. Copy of FIRM map showing subdivision |

Vote of 6 in favor, 0 against, 0 abstaining

Conditions:

1. Waivers and conditions as approved by the Planning Board must be included on the final plan prior to submittal for signature by the Chairman of the Planning Board.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. State law requires any plans receiving waivers or variances be recorded at the York County Registry of Deeds within 90 days of the final approval. This includes all subdivision plans.

Accordingly, the Planning Board hereby moves to:

1. Approve the Findings of Fact,
2. Acknowledge their reading,
3. Incorporate them into the meeting minutes by reference,
4. Record their approval by the Planning Board members,
5. Approve the final plan with the conditions of approval, and authorize the Planning Board Chairman to sign the final plan upon confirmation by the Town Planner of final plan compliance

Approved by the Kittery Planning Board on January 24, 2013

Vote of 6 in favor, 0 against, 0 abstaining

Title 16.6.2: An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

Mr. Emerson noted that past meetings have extended longer than expected and Planner items are not usually discussed. He recommends Town Planner items be moved to the front of the agenda, before New Business items. Ms. Grinnell also noted the Board members may want to have comments as well. Discussion followed regarding taking agenda items out of order, as needed, rather than having a set time for comment. Mr. Emerson argued that Planner and Board items benefit the Town and should not be put off because of a lack of time. However, the items should be brief and not brought up for detailed discussion. Mr. Balano suggested if this is a permanent change it should occur at the next meeting, not on this agenda. **Charlie Williams**, Take Flight LLC, suggested an approval of the agenda by the Board, and changes and adjustments can be made.

Ms. Grinnell moved that future Board agendas include Planning Board member item to be included prior to the New Business section.

Ms. Driscoll seconded

Mr. Emerson reminded the Board they must be careful where applications have a time frame for Board action and cannot be delayed, and discussion should be limited and scheduled for the next agenda.

Motion carries unanimously by all members present

NEW BUSINESS

ITEM 2 – Residential-Rural Zone Standards, Title 16 Land Use Development Code Amendments.

Action: Review proposed amendment and schedule a public hearing. In an effort to execute policy recommendations in Kittery's Comprehensive Plan, the Comprehensive Plan Update Committee is recommending that the Town Code be amended to reflect the existing Comp Plan policy on density in the Residential-Rural Zone.

Mr. Mylroie provided an updated amendment draft, and summarized the proposed amendment as an attempt to meet the Comp Plan's recommendation and the Comp Plan Update and Open Space Advisory Committee's support of changing the minimum land per dwelling unit in the Rural Residential Zone be changed from 1 acre to 3 acres. Additionally, the Open Space Advisory Committee suggested this amendment be treated as an emergency legislation to Council as this has been pending since 2003, and if there was a concern about the change, a review provision could be included following two years as an ordinance standard. The Comp Plan Update Committee also recommended this amendment also apply to the R-RC Zone, currently 2 acres per dwelling unit. Those parcels that may become nonconforming due to the proposed amendments would be allowed one single family dwelling unit. He explained that a build-out analysis indicated 2,400 dwelling units could be constructed in the Town based on current zoning, and projections indicate the town only needs 210-250 dwelling units over the next 10-20 years.

Mr. Emerson stated the average build in Kittery is 200 units per decade, and the largest demographic generation of 30-somethings (84 million) in the history of the U.S. will be purchasing homes, compared to 77 million baby-boomers. He argued the placement of one home per acre is artificial and does not insure rural character will be maintained, it just spreads homes out. Last year the cluster ordinance was set in place to provide for the retention of open space and preservation. This was attempted before, and the Council voted it down. He feels the growth needs of the future do not support this amendment. **Mr. Alesse** noted that one house does not cover municipal services for that family. **Ms. Driscoll** noted the Kittery Land Trust and other organizations are working to retain easements and properties to preserve. This has been in the current comprehensive plan for over 10 years and needs to be further discussed. **Mr. Melanson** explained the Comprehensive Growth Planning Committee [ed: Kittery Comprehensive Plan Committee] reviewed this and voted this down in 2010. He further stated the Board has a responsibility to consider property owner's rights, and developments under the cluster ordinance have helped retained the rural character, without creating sprawl. **Mr. Alesse** stated the larger parcels would be more attractive to the individual buyer, with more privacy and higher end homes.

Discussion followed regarding increasing open space requirements in a cluster development, soil suitability, wetlands and unbuildable land in the rural zone as a means to reduce the number of units allowed. **Mr. Mylroie** asked if development needs to be directed from this area to an area with municipal services and ability to handle higher densities, such as the Foreside. **Ms. Grinnell** asked that those people listed as representing this amendment need to participate and a letter of support from each is needed, to be included with the amendment request to Council. **Ms. Wells** reminded the Board this area is a watershed, and the soils may not be suitable to support septic systems. **Ms. Driscoll** asked that the Board hold a workshop and maps be prepared to show:

1. Lot lines
2. Roads
3. Wetlands, etc.

and whether a change in the cluster ordinance percentage of open space will help.

Ms. Driscoll moved to schedule a workshop on this item with the Conservation Committee, Comp Plan Update Committee and Opens Space Committee to discuss prior to scheduling a public hearing. **Mr. Melanson seconded**

Ms. Grinnell stated the request for emergency legislation would not meet the criteria.

Motion carries unanimously by all members present

The Board agreed to hold a workshop in conjunction with the Comp Plan Committee meeting. Ms. Driscoll will present this request to the Committee at the next meeting and secure a date and time.

ITEM 3 – Minor Misc. Code Modifications, Title 16 Land Use Development Code Amendments.

Action: Review proposed amendment and schedule a public hearing. Along with minor grammatical changes, proposed amendments include allowance of LED lights in Section 16.8.24 and changes to the definition of Selected Commercial Recreation in Section 16.2.

1. LED Lights:

Mr. Melanson moved to amend Title 16.8.24.2.F to strike ‘or’ after halide and to read as follows:

Lamps in exterior light fixtures must be incandescent, metal halide, high pressure sodium, or Light Emitting Diodes (LED).

Mr. Balano seconded

Motion carries with 5 in favor; 1 against (Grinnell)

2. Approved Plan Expiration:

Ms. Wells asked if there is a definition for the term “substantially complete”. There is no definition in the ordinance. Staff will propose definitions for consideration. No action on this item was taken.

3. Selected Commercial Recreation:

Board members discussed the general activities that could be prohibited, specifically those activities that may create excess noise. **Mr. Alesse** suggested specifying no activities exceed 70 decibels, including music and public address systems. **Ms. Driscoll** noted the Town has a noise ordinance in place. Discussion followed regarding whether lists of prohibitive or allowed activities would be preferred in a new definition, what would constitute a nuisance, and noise pollution. **Mr. Balano** stated he does not want to have to re-visit this issue each time a new recreational activity is proposed. **Mr. Emerson** suggested looking at the noise ordinance prior to making any changes to this definition. **Charlie Williams**, Take Flight LLC, offered his help in constructing a definition for further consideration.

Mr. Melanson moved to continue this item

Ms. Grinnell seconded

Motion carries unanimously

ITEM 4 – Quality Improvement Overlay Zone, Title 16 Land Use Development Code Amendments.

Action: Review proposed amendment and schedule a public hearing. In an effort to provide flexibility for development to achieve stated Comprehensive Plan policies for quality developments in specific areas within the Town, an overlay zone is proposed for the following base zones: Commercial 1, 2, & 3; Business Local and Business Local-1; Business Park; Mixed Use; And Mixed Use- Kittery Foreside.

Mr. Emerson suggested the Sustain Southern Maine advisory committee comment on this proposal for the Foreside area prior to further Board discussion.

Ms. Grinnell moved to postpone discussion on this item

Mr. Melanson seconded

Motion carries unanimously by all members present

ITEM 5– Town Code Title 5, Chapter 10, Use of the Public Way, Recommendation to Town Council.

Action: Review draft recommendation. Use of the Public Way ordinance was automatically repealed on December 31, 2012. There were no reported issues with the new code that allowed businesses in the Foreside area to use the Town Right-Of-Way for public seating. Town Council will need to go through code adoption/amendment proceedings in order to re-adopt the Use of the Public Way ordinance.

Mr. Balano noted the Board has not received a report on the trial period from the businesses participating or any negative reports. **Ms. Grinnell** suggested those participants workshop with the Board and report on their experiences. **Mr. Mylroie** explained only one application was received (Michael Landgarten) for the prior season. He believes most people did not want to expend the resources if the ordinance was not going to be permanent.

Ms. Grinnell moved to conduct a workshop with Foreside businesses at a future Planning Board meeting to discuss next steps.

Ms. Driscoll seconded

Mr. Mylroie stated businesses will be notified. **Mr. Balano** asked that the Police be asked if there was any problem with this ordinance. **Mr. Alesse** noted only one permit was issued, but others participated. This is a code enforcement issue.

Motion carries unanimously by all members present

ITEM 6 – Town Planner Items

- A. Kittery Foreside Plan – Sustain Southern Maine. Mr. Mylroie summarized the Sustain Southern Maine Partnership funded by HUD, the EPA and DOT. A technical advisory workshop will be held on February 11.
- B. Sarah Long Bridge – Starting a process for bridge re-design with meetings proposed in April, May, June and September.
- C. Comprehensive Plan Update (Housing, Economy, Land Use, Transportation)
- D. Destination Marketing and Memorial Bridge Closure Mediation Program – Business logo signs have been installed on I-95.
- E. Other – Board members discussed the scheduled meeting on 1/31/13 with the Sewer Department and Comp Plan Committee.

Mr. Melanson moved to adjourn

Mr. Balano seconded

Motion carries unanimously by all members present.

The Kittery Planning Board meeting of January 24, 2013 adjourned at 9:06 p.m.

Submitted by Jan Fisk, Recorder – January 25, 2013

ATTACHMENT

Statement by Devin Beliveau

I am here tonight to be counted as an enthusiastic supporter of the work done by the Thresher Memorial Group. Back in 2011 as Kittery State Rep that Don Kerr first approached me about the project. I was impressed by his vision, his passion and his dedication to see this worthwhile project through to fruition. Ever since meeting with Don I have been happy to pass out Memorial project brochures at my monthly constituent coffee hour and also to send out the email updates to all the residents on my list. I have received only positive feedback from the Kittery residents at my coffee hours and have never received anything negative in reply to the Memorial emails. As we moved from 2011 to 2012, I became especially impressed with the group's ability to fund raise. Raising \$80,000 in this economic climate speaks not only to this group's effectiveness but also to the overall popularity of the project. Now in 2013, I hope we can resolve whatever outstanding issues remain. With only about 10 weeks until the 50th anniversary of the loss of the Thresher, I hope we can continue the group's great progress toward the memorial for the 129 Americans that lost their lives in the Gulf of Maine. Thank you to the Planning Board for your work on this important issue.